

# **CHAPTER 5:**



## **OBLIGATING APPROPRIATED FUNDS**

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### **OBLIGATING APPROPRIATED FUNDS**

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## **CHAPTER 5**

### **OBLIGATING APPROPRIATED FUNDS**

#### **I. INTRODUCTION. Following this block of instruction, students will understand:**

- A. The importance of accounting for commitments and obligations;
- B. Amounts to commit and obligate for various types of contract actions.
- C. Obligation rules for bid protests, contract changes, contract terminations, litigation, and miscellaneous other circumstances.

#### **II. REFERENCES.**

- A. [31 U.S.C. § 1501](#), Documentary evidence requirement for Government obligations.
- B. Office of Management and Budget Circular A-11, Section 20.5, (2013) [hereinafter [OMB Cir. A-11](#)].
- C. Government Accountability Office, [Principles of Federal Appropriations Law](#), Vol. II, ch. 7, Obligation of Appropriations (3<sup>d</sup> ed. 2006).
- D. Department of Defense, [DOD Financial Management Regulation](#), Vol. 3, Budget Execution – Availability and Use of Budgetary Resources, ch.8, Standards for Recording and Reviewing Commitments and Obligations [hereinafter DOD FMR].
- E. [Defense Finance and Accounting Service--Indianapolis Regulation 37-1](#), Finance and Accounting Policy Implementation, ch. 7 (Commitments) (Oct. 2001) & ch. 8 (Obligation Management) (Jan. 2010) [hereinafter DFAS-IN 37-1].

- F. [Defense Finance and Accounting Service--Denver/Air Force Interim Guidance, Procedures For Administrative Control of Appropriations and Funds Made Available to the Department of the Air Force](#) (Sep. 1999) [hereinafter DFAS-DE, Procedures for Administrative Control]; [Defense Finance and Accounting Service--Denver/Air Force Interim Guidance, Accounting For Commitments](#) (Oct. 2003) [hereinafter DFAS-DE, Commitments]; and [Defense Finance and Accounting Service Instruction 7000.4-I, Accounting for Obligations](#) (Aug. 2013) [hereinafter DFAS 7000.4-I, Obligations].

### **III. ACCOUNTING FOR COMMITMENTS.**

#### **A. Definitions.**

1. Certifying Officer. An individual authorized to certify the availability of funds on any documents or vouchers submitted for payment and/or indicates payment is proper. (S)he is responsible for the correctness of the facts and computations, and the legality of payment. DFAS-IN 37-1, Glossary.
2. Funds Certifying Officials. An individual responsible for the proper assignment of funding on a commitment or obligation document before the obligation is incurred. DFAS-IN 37-1, Glossary.
3. Fund Managers. Individuals who manage financial resources to include major activity, sub-activity directors, and their representatives who are delegated fund certification responsibility. DFAS-IN 37-1, Glossary.
4. Certification of Fund Availability. A certification by a funds-certifying official that funds are available in the proper subdivision of funds to cover the obligation to be incurred. This certification authorizes the obligating official to make the desired obligation. DFAS-DE, Procedures for Administrative Control, Definitions, p. X.
5. Commitment. An administrative reservation of funds based upon firm procurement requests, orders, directives, and equivalent instruments. An obligation equal to or less than the commitment may be incurred without further approval of a certifying official. DOD FMR, vol. 3, ch. 15, para. 150202.C and D.

6. Initiation. An administrative reservation of funds based on procurement directives, requests, or equivalent instruments that authorize preliminary negotiations, but require that funds be certified by the official responsible for the administrative control of funds before incurrence of the obligation. Initiations help keep pre-commitment actions, such as approved procurement programs and procurement directives, within the available subdivision of funds. Synonyms may be used for this term. DOD FMR, vol. 1, Definitions.

B. Rules Governing Commitments.

1. When used. DOD and OMB have agreed to use commitment accounting procedures for military construction; research, development, test, and evaluation; and procurement appropriations. Commitments need not be recorded for small purchases if, in the aggregate, they are insignificant in the management of funds. Commitment accounting is not required for other accounts, but may be used if cost effective. Commitment accounting is not required for the operation and maintenance appropriation accounts, revolving fund accounts, or military personnel appropriation accounts, but may be used if cost effective. DOD FMR, vol. 3, ch. 15, para. 150202E.
  - a. Army. The Army requires the use of commitment registers for all unexpired funds by the accountable financial officers as well as certification of fund availability for unexpired and expired appropriations. DFAS-IN 37-1, ch.2, para. 020302.K; ch. 3, para. 031701.
  - b. Air Force. Commitment accounting is prescribed for all Air Force appropriations, apportioned stock fund divisions, management funds, contract authorizations, administrative and direct cite foreign military sales (FMS) trust fund, and special fund appropriations. *See* Interim Guidance on Accounting for Commitments (October 2003), p. 3-1.
2. Who. The official responsible for administrative control of funds for the affected subdivision of the appropriation shall sign the commitment document.<sup>1</sup> DOD FMR, vol. 3, ch. 15, para. 150202A.

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<sup>1</sup> A commitment document is an order form used to ensure that funds are available prior to incurring an obligation. Commitments in the Army may be accomplished using DA Form 3953 (Purchase Request and Commitment, PR&C) or similar documents having the effect of a firm order or authorization to enter into an obligation. DFAS-IN 37-1, ch. 7, para. 070601. *See* Appendix C for an example of the PR&C.

- a. Army. Serviced activities or fund managers will maintain commitment registers, and are responsible for processing, recording, and performing the oversight function for commitment accounting. Fund control responsibilities may be delegated, in writing, to the Director of Resource Management (DRM)/ Comptroller or other appropriate official(s) IAW regulation. Designated officials will perform commitment accounting as required. DFAS-IN 37-1, paras. 0703, 030209.
    - b. Air Force. Financial Service Office(r) will certify fund availability before obligations are authorized or incurred against funding documents. DFAS-DE Interim Guidance, Procedures for Administrative Control of Appropriations and Funds Made Available to the Department of the Air Force (Sept. 1999), p. 1-7.
  3. Why. Commitment accounting helps ensure that the subsequent entry of an obligation will not exceed available funds. DOD FMR, vol. 3, ch. 15, para. 150202A. Issuing a commitment authorizing obligations in excess of an appropriation or formal subdivision of funds could result in an Antideficiency Act violation of 31 U.S.C. § 1341 or 31 U.S.C. § 1517.
  4. What. Activities may commit funds only to acquire goods, supplies, and services that meet the bona-fide needs of the period for which Congress appropriated funds, or to replace stock used during that period. DFAS-IN 37-1, para. 070501; DOD FMR, vol. 3, ch. 8, para. 080201
  5. Agencies cancel outstanding commitments when the committed funds expire for obligation. DOD FMR, vol. 3, ch. 15, para. 150202F.
- C. Determining the Amounts of Commitments. Agencies commit funds according to the following rules:
1. General. Record as a commitment the cost estimate set forth in the commitment document. DOD FMR, vol. 3, ch. 8, para. 080201.

2. Contingent liabilities. As a budgetary term, a contingent liability represents a variable that cannot be recorded as a valid obligation. DOD FMR, vol. 1, Definitions. Commit an amount that is **conservatively estimated to be sufficient** to cover the additional obligations that probably will materialize, based upon judgment and experience. Allowances may be made for the possibilities of downward price revisions and quantity underruns. The contingent liability shall be supported by sufficient detail to facilitate audit. DOD FMR, vol. 3, ch. 8, para. 080202A. Examples of contract actions requiring a contingent liability commitment include:
- a. Fixed-price contracts with price escalation, price redetermination, or incentive clauses, such as economic price adjustments (EPAs).
  - b. Contracts authorizing variations in quantities to be delivered.
  - c. Contracts where allowable interest may become payable on a contractor claim supported by a written appeal pursuant to the “Disputes” clause of the contract.
  - d. Cost-reimbursable and time-and-material contracts.
    - (1) Commitment amounts relating to cost-plus-fixed-fee, cost-sharing, cost-plus-incentive-fee, time-and-material, and labor-hour contracts should include the fixed-fee in the cost-plus-fixed-fee and the target fee in the cost-plus-incentive-fee. *See* Interim Guidance on Accounting for Commitments (October 2003), p. 4-4.
    - (2) Cost-plus-award-fee contracts. Commit the estimated cost, the base fee, and an estimated amount based on judgment and experience for the award fee. *See* Interim Guidance on Accounting for Commitments (October 2003), p. 4-4.
3. Letter contracts and letters of intent. Commit **funds to cover the difference** between the maximum legal liability of the government under the interim agreement and the maximum estimated cost of the definitized contract. An exception is a letter providing that award of the definitive contract is dependent upon a congressional appropriation, in which case no funds are available for commitment. DOD FMR, vol. 3, ch. 8, para. 080202B.

4. Open-end contracts and option agreements. Commit funds only when the amount estimated is **reasonably firm**. DOD FMR, vol. 3, ch.8, para. 080202C.
  5. Contract Amendments or Engineering Changes. Commit an amount based on a stated **cost limitation**. DOD FMR, vol. 3, ch. 8, para. 080202D.
  6. Intra-Governmental Requisitions and Orders (such as a DD Form 448, “Military Interdepartmental Purchase Request”). Commit the **amount of the order** until validly obligated under the guidelines of the DOD FMR. DOD FMR, vol. 3, ch. 8, paras. 080202E and 0807.
  7. Imprest Funds.<sup>2</sup> Record as a commitment **before funds are advanced** to the imprest fund cashier. DFAS-DE, Accounting For Commitments, p. 4-2; see also Appropriations Accounting for Imprest Fund Advances Issued to Cashiers, B-240238, 70 Comp. Gen. 481, (May 8, 1991).
  8. Commit no funds for--
    - a. Potential termination charges on multi-year contracts that provide for cancellation charges if the government must cancel the contract for reasons other than contractor liability. DOD FMR, vol. 3, ch. 8, para. 080202F.
    - b. Blanket Purchase Agreements. DFAS-DE, Accounting For Commitments, p. 4-2.
- D. Advanced Acquisition Planning for the Next FY Funding. In some instances, qualified statements are used to provide authority to contracting officers to proceed with advance contracting actions before actual receipt of funds. DFAS-DE, Accounting For Commitments, p. 3-4.

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<sup>2</sup> An imprest fund is a “cash fund of a fixed amount established by an advance of funds with or without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.” FAR 13.001. DOD FMR, vol. 5, Glossary For DOD activities, imprest funds may be used **only** for classified operations or contingency, humanitarian or peacekeeping operations overseas. DOD 7000.14-R, vol. 5, ch. 2, para. 0209 and DFAR 213.305(d).

1. Air Force. Instead of a certification of fund availability, the following statement must be placed upon the request for purchase and signed by budget office personnel at the time approval is obtained: "This requirement is included or provided for in the installation or major command financial plan for FY\_\_\_\_. The accounting classification shall be \_\_\_\_." See DFAS-DE 7010.2-R, para. 9-18e.
2. Army. The comptroller or designee shall sign the following statement on the purchase request: "This requirement is included or provided for in the financial plan for FY\_\_\_\_. The accounting classification will be \_\_\_\_\_. This statement is not a commitment of funds." See AFARS 1.602-2.

#### IV. OBLIGATION OF FUNDS.

##### A. Definitions.

1. Obligation. An act which creates a **legal liability** on the part of the Government for the payment of appropriated funds for goods and services ordered or received. GAO Redbook, Vol. II, page 7-3 to 7-4.
2. Examples: Amounts of orders placed, contracts awarded, services received, and similar transactions that will require payments during the same or a future period. The legal requirement for recording obligations is 31 U.S.C. § 1501. OMB Cir. No. A-11, para. 20.5. All obligations require a standard document number (SDN). DFAS-IN 37-1, para. 080102. SDN formats are in DFAS Manual 37-100-FY.
3. The obligation takes place when the definite commitment is made, even though the actual payment may not take place until the following fiscal year. GAO Redbook, Vol. II, page 7-4.
4. Current Appropriation. An appropriation whose availability for new obligations has not expired under the terms of the applicable appropriations act.
5. Expired Appropriation. An appropriation whose availability for new obligations has expired, but which retains its fiscal identity and is available for recording, adjusting, and liquidating obligations properly chargeable to that appropriation. 31 U.S.C. § 1553(a).

6. Closed Appropriation. An appropriation that is no longer available for any purpose. An appropriation becomes "closed" five years after the end of its period of availability as defined by the applicable appropriations act. 31 U.S.C. § 1552(a).

B. General Rules.

1. An obligation must be definite and certain. GAO Redbook, Vol. II, page 7-3.
2. Obligate funds only for the purposes for which they were appropriated. 31 U.S.C. § 1301(a).
3. Obligate funds only to satisfy the bona fide needs of the current fiscal year. 31 U.S.C. § 1502(a); DOD FMR, vol. 3, ch. 8, para. 080303A.
4. Obligate funds only if there is a genuine intent to allow the contractor to start work promptly and to proceed without unnecessary delay. DOD FMR, vol. 3, ch. 8, para. 080303B.
5. Generally, obligate current funds when the government incurs an obligation (incurs a liability). DOD FMR, vol. 3, ch. 8, para. 080302. Some exceptions, discussed in this outline and in the "Time" outline, include: Protests (see section VIII A of this outline); Replacement contracts for contracts that have been terminated for default (see section VI of this outline) and "in-scope" contract changes (see section VI B of this outline).
6. An improper recording of funds does not create a contractual right. Integral Systems v. Dept. of Commerce, GSBICA 16321-COM, 05-1 BCA ¶ 32,946 (Board rejected a constructive option argument based on the recording of an option exercise which failed to occur).
7. Do not obligate funds in excess of (or in advance of) an appropriation, or in excess of an apportionment or a formal subdivision of funds. 31 U.S.C. §§ 1341, 1517; DOD FMR, vol. 3, ch. 8, para. 080301

8. Subject to the Availability of Funds. Execute contracts “subject to the availability of funds” (SAF) if administrative lead-time requires contract award prior to the receipt of funds to ensure timely delivery of the goods or services. If a SAF clause is used, the Government shall not accept supplies or services until the contracting officer has given the contractor written notice that funds are available. FAR 32.703-2.
  - a. FAR 52.232-18, Availability of Funds, may be used only for operation and maintenance and continuing services (e.g., rentals, utilities, and supply items not financed by stock funds) (1) necessary for normal operations and (2) for which Congress previously had consistently appropriated funds, unless specific statutory authority exists permitting applicability to other requirements. FAR 32.703-2 (a).
  - b. FAR 52.232-19, Availability of Funds for the Next Fiscal Year, is used for one-year indefinite-quantity or requirements contracts for services that are funded by annual appropriations that extend beyond the fiscal year in which they begin, provided any specified minimum quantities are certain to be ordered in the initial fiscal year. FAR 32.703-2 (b).

## **V. AMOUNTS TO OBLIGATE.**

### **A. General.**

1. Recording obligations.
  - a. Obtain documentary evidence of the transaction before recording an obligation. 31 U.S.C. § 1501; DOD FMR, vol. 3, ch.8, para. 080302; DFAS-DE 7000-4, para. 3; DFAS-IN 37-1, chapter 8.
  - b. Contracts, purchase orders, rental agreements, travel orders, bills of lading, civilian payrolls, and interdepartmental requisitions are common contractual documents supporting obligations.  
DFAS-IN 37-1, chapter 8.
2. Generally, the type of contract involved determines the specific rules governing the amount of an obligation and when to record it.

3. Obligation must be recorded no later than ten calendar days following the day that an obligation is incurred. Obligations of \$100,000 or more must be recorded in the same month, but every effort should be made to record an obligation in the same month. DoD FMR, vol. 3, ch. 8, para. 080301A

B. Contract Types.

1. Firm-Fixed Price Contracts (FFP). FAR 16.202.
  - a. Description. FFP contracts are not subject to price changes during performance, regardless of contractor cost experience. All risk of increased costs of performance fall on the contractor.
  - b. Amount to Obligate. Record **total amount** stated in the contract. DOD FMR, vol. 3, ch. 8, para. 080501.
2. Fixed-Price contracts with escalation, price redeterminations, incentive provisions, and award fees. In each case below, obligate the **target or billing price** stated in the contract, even though the ceiling price may be higher. DOD FMR, vol. 3, ch.8, para. 080502.
  - a. Fixed-Price Contract with Economic Price Adjustment (FP w/EPA). FAR 16.203.
    - (1) The Economic Price Adjustment (EPA) clause, FAR 52.216-2, provides for government assumption of a portion of the cost risk of certain unforeseeable price fluctuations, such as material or wage increases. If the clause is inserted into a contract, the government will absorb some cost increases.
    - (2) Amount to Obligate. At the time of contract award, obligate the **amount of the base contract**. No additional obligation of funds is required, as the contract price will be adjusted later if the contingencies occur.
  - b. Fixed-Price Contracts with Price Redetermination (FPR). FAR 16.205 and 16.206. There are two types, based on the structure of the contract. For both, obligate the **target or billing price** (the base contract price):

- (1) Prospective. Price is fixed for initial quantities, but is adjusted periodically for future quantities based upon the contractor's cost experience. This type is useful on initial production contracts.
- (2) Retroactive. Price for work already performed is subject to redetermination based upon the contractor's actual cost experience. This type of contract is useful on small R&D contracts and other contracts where unresolved disagreements over cost accounting issues may affect price significantly.

c. Fixed-Price-Incentive Contract (FPI). FAR 16.403.

- (1) An FPI contract provides for adjusting profit and establishing the final contract price by application of a formula based on the relationship of the total final negotiated cost to the total target cost. The final price is subject to a price ceiling, negotiated at the outset.
- (2) The contractor bears all costs above the fixed ceiling price.
- (3) Amount to Obligate. Obligate the **fixed price** stated in the contract, or the target or billing price in the case of a contract with an incentive clause. Subsequently, adjust to a "best-cost estimate" whenever it is determined that the actual cost of the contract will differ from the original target. DOD FMR, vol. 3, ch.8, para. 080502.

d. Fixed-Price-Award-Fee Contracts. FAR 16.404.

- (1) Contractor receives a negotiated fixed price (which includes normal profit), with an opportunity to receive additional award fee based upon the quality of its performance.
- (2) Award-fee provisions may be used when the Government wishes to motivate a contractor and other price incentives cannot be used because contractor performance cannot be measured objectively.

- (3) Amount to Obligate. Obligate the **fixed price** stated in the contract, but **not** the award fee. Obligate award when determined that award will be paid. Obligation for award is against the same appropriation and FY used for contract. DoD FMR, vol. 3, ch. 8, para. 080511D; DFAS-IN 37-1, Table 8-1.

Rating	Definition of Rating	Award Fee
Unsatisfactory	Contractor had failed to meet the basic (minimum essential) requirements of the contract.	0%
Satisfactory	Contractor has met the basic (minimum essential) requirements of the contract.	No Greater than 50%
Good	Contractor has met the basic (minimum essential) requirements of the contract, and has met at least 50% of the award fee criteria established in the award fee plan.	51% - 75%
Excellent	Contractor has met the basic (minimum essential) requirements of the contract, and has met at least 75% of the award fee criteria established in the award fee plan.	76% - 90%
Outstanding	Contractor has met the basic (minimum essential) requirements of the contract, and has met at least 90% of the award fee criteria established in the award fee plan.	91% - 100%

- (4) Funding Limitations: FAR 16.4 requires the government to evaluate contractor performance in deciding how much award fee to pay the contractor. FAR 16.401(e) includes a matrix to assist contracting officers in deciding how much fee to pay.

### 3. Cost-Reimbursement Contracts. FAR Subpart 16.3.

- a. Description. These contract types provide for payment of allowable incurred costs to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed—except at its own risk—without the approval of the contracting officer. FAR 16.301-1.
- b. Cost ceilings. Ceilings are imposed through the Limitation of Cost clause, FAR 52.232-20 (fully funded), or the Limitation of Funds clause, FAR 52.232-22 (incrementally funded). The contractor may not recover costs above the ceiling unless the contracting officer authorizes the contractor to exceed the ceiling. RMI, Inc. v. United States, 800 F.2d 246 (Fed. Cir. 1986).
- c. Fees. In Government contracting, fee is a term of art for the profit the Government agrees to pay on some cost-reimbursement contracts.
- d. Types of Cost-Reimbursement Contracts.
  - (1) Cost-Plus-Fixed-Fee (CPFF) Contract. FAR 16.306.
    - (a) The contract price is the contractor's allowable costs, plus a fixed fee, which is negotiated and set prior to award.
    - (b) Obligate the **full amount** of the contract (i.e. total estimated costs), including the fixed fee. DFAS-IN 37-1, Table 8-1.
  - (2) Cost-Plus-Incentive-Fee Contract (CPIF). FAR 16.304, FAR 16.405-1.
    - (a) This type specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula. After contract performance, the fee payable to the contractor is determined in accordance with the formula.
    - (b) Obligate the **total estimated payment**, including the target fee. DOD FMR, vol. 3, ch. 8, para. 080503.
  - (3) Cost-Plus-Award-Fee (CPAF) Contract. FAR 16.305 and 16.405-2.

- (a) The contractor receives its costs; a base fee<sup>3</sup> that is fixed at award; and, possibly, an additional award fee based upon the quality of the contractor's performance.
  - (b) The award fee is determined unilaterally by the contracting officer or Award Fee Determining Official.
  - (c) Obligate the **total estimated payment**, including the base fee. Do not include the award amount. Obligate award fee when determined that award will be paid. DOD FMR, vol. 3, ch. 8, para. 080503; DFAS-IN 37-1, Table 8-1.
  - (d) Funding Limitations: The fee limitations of FAR 16.4 also apply to CPAF contracts.
- (4) Cost Contract. FAR 16.302.
- (a) The contractor receives its allowable costs but no fee.
  - (b) Obligate total estimated payment of the contract. DOD FMR, vol. 3, ch. 8, para. 080503; DFAS-IN 37-1, Table 8-1.
- (5) Time-and-Materials (T&M), FAR 16.601, and Labor-Hour (L-H) Contracts, FAR 16.602.
- (a) T&M contracts and LH contracts are used when it is impossible at the outset to estimate accurately the extent or duration of the work. The work being acquired is defined as a specified number of hours effort by an individual of a certain skill level.
  - (b) The contract is priced at a specified firm-fixed-price per labor hour for each skill level. In a T&M contract, materials are priced at cost plus material overhead.

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<sup>3</sup> For DOD contracts, base fees are limited to 3% of the estimated cost at time of award. DFARS 216.405-2(c)(ii)(2)(b).

- (c) Amount to obligate. Obligate the **minimum liability** exclusive of permitted variations. Obligate additional funds for each delivery order when the order is placed. DOD FMR, vol. 3, ch. 8, para. 080503; DFAS-IN 37-1, tbl. 8-1.

#### 4. Indefinite Delivery Contracts.

##### a. Variable Quantity Contracts.

##### (1) Indefinite-Quantity/Indefinite-Delivery Contracts (also called Minimum Quantity). FAR 16.504.

- (a) An ID/IQ contract shall require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor shall furnish any additional quantities, not to exceed the stated maximum. FAR 16.504(a).
- (b) The government must buy the minimum quantity, but may purchase up to the maximum quantity. The government issues task orders (for services) or delivery orders (for supplies) as needs arise.
- (c) Amount to obligate. Obligate the amount of the stated minimum quantity at the time of contract award. Once the stated minimum is ordered, obligate funds for each additional order at the time the order is issued. DOD FMR, vol. 3, ch. 8, para. 080504; DFAS-IN 37-1, tbl. 8-1.
- (d) Any indefinite delivery/indefinite quantity (ID/IQ) contract must include a guaranteed minimum order of goods or services under that contract. The government is required to order at least that minimum quantity from the contractor (or contractors). Because the government must pay for at least the guaranteed minimum, that amount must reflect a valid *bona fide* need at the time the contract is executed. B-321640, U.S. Small Business Administration—Indefinite-Delivery Indefinite-Quantity Contract Guaranteed Minimum (2011).

- (e) Statutory Limitation on Awarding Sole-Source ID/IQ's: Section 843 of the 2008 NDAA limited DoD's ability to award large, sole-source task orders on ID/IQ contracts. Section 843 modified Title 10 by prohibiting the award of any ID/IQ estimated to exceed \$100 million (including options), unless the head of the agency determines, in writing, that:
- (i) the task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;
  - (ii) the contract provides only for firm, fixed price task orders or delivery orders for— products for which unit prices are established in the contract, or services for which prices are established in the contract for the specific tasks to be performed;
  - (iii) only one source is qualified and capable of performing the work at a reasonable price to the government; or
  - (iv) because of exceptional circumstances, it is necessary in the public interest to award the contract to a single source.
  - (v) Finally, the head of the agency must notify Congress within 30 days after any written determination authorizing the award of an ID/IQ estimated to exceed \$100 million.

(2) Indefinite delivery-definite quantity contracts. FAR 16.502.

- (a) The quantity and price are fixed. The government issues task (for services) or delivery orders (for supplies) to specify the delivery date and location.
- (b) Amount to obligate. Obligate the **full amount of the definite quantity** (for the quantity required in the current year) at the time of contract award. DFAS-IN 37-1, tbl. 8-1; DoD FMR. Vol. 3, ch. 8, para. 080504. Note that the agency must have a valid *bona fide* need for the full quantity at the time of contract award.

(3) Requirements Contracts. FAR 16.503.

- (a) The government fills all actual purchase requirements of designated Government activities for supplies or services during a specified contract period, with deliveries or performance to be scheduled by placing orders with the contractor.
- (b) Amount to obligate. Obligate no funds at contract award. Record each order, when issued, as a separate obligation. DFAS-IN 37-1, tbl. 8-1; DOD FMR, vol. 3, ch. 8, para. 080504.

5. Letter Contracts or Letters of Intent.

- a. Defined. Letter contracts are used to expedite performance in exigent or emergency circumstances.
- b. Definitization. The parties must reduce the contract terms to writing within 180 days after issuance. FAR 16.603-2c; DFARS 217.7404-3. Until the contract terms are definitized, the government may not pay the contractor more than 50% of the NTE price. 10 U.S.C. § 2326; FAR 16.603-2(d).
- c. Amount to obligate. Obligate current funds in the amount of the maximum liability authorized. When the contract is definitized, adjust the obligation to equal the final amount. In adjusting the balance, use funds currently available for obligation. DOD FMR, vol. 3, ch. 8, para. 080507; DFAS-IN 37-1, tbl. 8-1; Obligating Letter Contracts, B-197274, Sept. 23, 1983, 84-1 CPD ¶ 90.

6. Purchase Orders.

- a. A purchase order creates an obligation if the purchase order represents acceptance of a binding written offer of a vendor to sell specific goods or furnish specific services at a specific price, or the purchase order was prepared and issued in accordance with small purchase or other simplified acquisition procedures. DOD FMR, vol. 3, ch. 8, para. 080510A.

- b. A purchase order requiring acceptance by the vendor before a firm agreement is reached must be recorded as an obligation in the amount specified in the order at the time of acceptance. If written acceptance is not received, delivery under the purchase order is evidence of acceptance to the extent that delivery is accomplished during the period of availability of the appropriation or funding cited on the purchase order. If delivery is accepted subsequent to the period of availability, a new or current funding citation must be provided on an amended purchase order. DOD FMR, vol. 3, ch. 8, para. 080510B.

## 7. Service Contracts.

- a. Severable Services. Absent a statutory exception, severable services are the *bona fide* need of the fiscal year in which performed. Thus, agencies must fund service contracts with dollars available for obligation on the date the contractor performs the services. Matter of Incremental Funding of Multiyear Contracts, B-241415, 71 Comp. Gen. 428 (1992); EPA Level of Effort Contracts, B-214597, December 24, 1985, 65 Comp. Gen. 154, 86-1 CPD ¶ 216; Matter of Funding of Air Force Cost Plus Fixed Fee Level of Effort Contract, B-277165 (2000).
- b. Statutory exception to severable service bona fide needs rule: DOD agencies may obligate funds current at the time of award to fully finance any severable service contract with a period of performance that does not exceed one year. See 10 U.S.C. § 2410a (this authority also covers the Coast Guard). Similar authority exists for non-DOD agencies. See 41 U.S.C. § 253l. However, the agency must obligate the funds for the contract before the funds expire. National Labor Relations Board – Improper Obligation of Severable Service Contract, Comp. Gen. B-308026, Sept. 14, 2006 (due to “ministerial” error, NLRB failed to obligate FY 05 funds for an option year for service contract that ran from 1 Oct 05 – 30 Sep 06). “Fund holders may obligate funds current when a severable service contract is signed for the amount of the contract provided the contract does not exceed 12 months. Fund holders may also split the obligation between fiscal years that the contract covers provided the contract does not exceed 12 months. Severable service contracts that exceed 12 months will be funded by appropriations of the fiscal years in which the services are rendered.” DFAS-IN Reg. 37-1, para. 080603(A); DOD FMR, vol. 3, ch. 8, para. 080303.C.

- c. Nonseverable services. If the services produce a single or unified outcome, product, or report, the services are nonseverable. If so, the government must fund the entire effort with dollars available for obligation at the time the contract is awarded, and the contract performance may cross fiscal years. DFAS-IN 37-1, tbl. 8-1; Incremental Funding of U.S. Fish and Wildlife Service Research Work Orders, B-240264, 73 Comp. Gen. 77 (1994); Proper Appropriation to Charge Expenses Relating to Nonseverable Training Course, B-238940, 70 Comp. Gen. 296 (1991); Proper Fiscal Year Appropriation to Charge for Contracts and Contract Increases, B-219829, 65 Comp. Gen. 741 (1986).

8. Options.

- a. Defined. An option is an offer that is irrevocable for a fixed period. An option gives the government the unilateral right, for a specified time, to order additional supplies or services, or to extend the term of the contract, at a specified price. FAR 2.101.
- b. Amount to Obligate. Obligate funds for each option period after funds become available. Obligations must be consistent with all normal limitations on the obligation of appropriated funds, e.g., bona fide needs rule, period of availability, and type of funds. DoD FMR, vol. 3, ch. 8, para. 080303.A.
- c. For severable service contracts, option years are treated as new contracts. Therefore, when the severable service contract has renewal options, obligate funds for the basic period and any penalty charges for failure to exercise options. DFAS-IN 37-1, ch. 8, para. 080603(B).

9. Rental Agreements and Leases of Real or Personal Property. Generally, obligate for one month at a time throughout the term of the rental agreement. Determine the amount of the obligation by analyzing the government's rights to terminate the rental agreement or lease. DOD FMR, vol. 3, ch. 8, para. 080603.

- (1) If the government may terminate a rental agreement without notice and without obligation for any termination costs, obligate the monthly amount of the rent on a monthly basis. DOD FMR, vol. 3, ch. 8, para. 080602.

- (2) If the government may terminate a rental agreement without cost upon giving a specified number of days notice, obligate the monthly amount of the rent. Additionally, obligate for the number of days notice the government is required to give. DOD FMR, vol. 3, ch. 8, para. 080603.
- (3) If the rental agreement provides for a specified payment in the event of termination, obligate the monthly rental amount plus the amount of the termination payment. DOD FMR, vol. 3, ch. 8, para. 080604.
- (4) If a domestic or foreign rental agreement has no termination provision and is financed with an annual appropriation, obligate the full amount of the rental agreement (up to 12 months), even if the rental agreement extends into the next fiscal year. DOD FMR, vol. 3, ch. 8, para. 080605.
- (5) The government may enter into leases of structures and real property other than military family housing in foreign countries for periods up to 5 years and the rent for each yearly period is paid from funds appropriated for that year (15 years in Korea) and rent may be paid on an annual basis for from funds appropriated from that year.. 10 U.S.C. § 2675. DOD FMR, vol. 3, ch. 8, para. 080605.

10. Reimbursable Orders Placed With DOD Components or Other U.S. Government Agencies.

- a. Reimbursable orders. The requiring agency records an obligation when the procuring agency accepts the order in writing. DOD FMR, vol. 3, ch. 8, para. 080701; DFAS-IN 37-1, tbl. 8-2.
- b. Direct citation method. Record the obligation when the requiring agency is notified, in writing, that the acquiring agency's contract, project order, purchase order, etc., has been executed, or when the requiring agency receives copies of the obligating documents (contract, delivery order, etc.) from the procuring agency. DOD FMR, vol. 3, ch. 8, para. 080702. For the Army, DFAS-IN 37-1, tbl. 8-2, provides that the requiring agency may record the obligation only upon receipt of the obligating documents from the acquiring agency.

- c. DFAS guidance regarding reimbursable orders and direct fund cite orders: When a direct fund cite is used, the performing activity will provide a copy of the contract or other obligating document to the ordering activity. This will provide the documentation required to record the obligation. If not using direct fund cite, the ordering activity will obligate upon receipt of the accepted DD Form 448-2. DFAS-IN 37-1, para. 081207(A)7.
- d. The 2005 Appropriations Act stated that O&M funds used for the following contracts may be obligated at the time the reimbursable order is accepted by the performing activity: supervision and administration costs for facilities maintenance and repair, minor construction, or design projects, or any planning studies, environmental assessments or similar activities related to installation support functions. This provision applies in future years, and has not been rescinded as of the 2012 NDAA or DODAA. 118 Stat. 987 (4 Aug. 2004).
- e. Orders placed with DOD components under the Project Order Statute (41 U.S.C. § 23), or with other U.S. governmental agencies under the Economy Act or non-Economy Act (31 U.S.C. § 1535). DOD FMR, vol. 3, ch. 8, para. 080703.
  - (1) Project orders. When the performing activity accepts the order in writing, obligate funds in the amount stated in the order. DOD FMR, vol. 3, ch. 8, para. 080703.A; DFAS-IN 37-1, tbl. 8-2.
  - (2) Economy Act orders. Requesting agencies must obligate funds when the performing activity accepts the order in writing. Deobligate funds on Economy Act orders issued against annual or multiple year appropriations to the extent the unit or agency filling the order has not incurred obligation before the period of availability of the funds by providing goods or services, or making an authorized contract to provide the requested goods or services. DOD FMR, vol. 3, ch. 8, para. 080703B; DFAS-IN 37-1, tbl. 8-2.
  - (3) Non-Economy Act Orders. Obligate funds only when supported by documentary evidence of an order required by law to be placed with an agency or upon a binding agreement (funding vehicle) between an agency and another person (including an agency); the agreement is in writing; is for a purpose authorized by law; serves a bona fide need arising, or existing, in the fiscal year or years for which the appropriation is available for new obligations; executed before the end of the period of availability for new obligation of the appropriation or

fund used; and provides for specific goods to be delivered, real property to be bought or leased, or specific services to be supplied. Funds provided to a performing agency for ordered goods where the funds period of availability thereafter has expired shall be deobligated and returned by the performing agency unless the request for goods was made during the period of availability of the funds and the time(s) could not be delivered within the funds period of availability because of delivery, production, manufacturing lead time, or unforeseen delays that are out of the control and not previously contemplated by the parties. DOD FMR, vol. 11A, ch. 18, para. 180301.

- f. Orders required by law to be placed with another U.S. governmental agency, such as the Federal Prison Industries (18 U.S.C. § 4124), or the Government Printing Office (44 U.S.C. § 111). Record as an obligation by the requiring agency in the amount stated in the order when the order is issued. DOD FMR, vol. 3, ch. 8, para. 080704; DFAS-IN 37-1, tbl. 8-2.
  - g. It is improper to “bank” an agency’s annual funds with a GSA account to cover future year needs. Implementation of the Library of Congress FEDLINK Revolving Fund, B-288142, Sep. 6, 2001; Continued Availability of Expired Appropriation for Additional Project Phases, B-286929, Apr. 25, 2001. In accordance with (IAW) 40 U.S.C. 1412(e), Department of Defense (DoD) activities may obtain information technology resources from GSA programs without relying on the Economy Act. The obligation is recorded at the time the activity enters into a binding written interagency agreement with GSA. New needs may not be added to an existing order and funded with expired funds unless deemed to be a within scope change to the original order. DFAS-IN 37-1, para. 080607.
11. Stock Fund Orders. These are orders for stock (i.e. standard) items procured through an integrated material management (IMM) activity, such as vehicle repair parts or ammunition. Record as an obligation when the order is placed. If the item does not have a stock number, record at the time the stock fund accepts the order. DOD FMR, vol. 3, ch. 8, para. 080801.B.
- a. Adjust obligations for undelivered stock fund orders when a change notice affecting price, quantity, or an acceptable substitution is received. DOD FMR, vol. 3, ch. 8, para. 080802A.

- b. Cancel a stock fund obligation when notice is received of: (a) unacceptable substitution; (b) transfer of a stock-funded item to funding by a centrally managed procurement appropriation within a DOD component; or (c) advice that the stock fund is unable to perform under the terms of the order. DOD FMR, vol. 3, ch. 8, para. 080802A.
- c. When the customer's financing appropriation expires, an undelivered order for a nonstock-numbered item for which the stock fund has not executed a procurement action (incurred an obligation) also expires. DOD FMR, vol. 3, ch. 8, para. 080803.

## VI. ADJUSTING OBLIGATIONS.

- A. Adjusting Obligation Records. For five years after the time an appropriation expires for incurring new obligations, both the obligated and unobligated balances of that appropriation shall be available for recording, adjusting, and liquidating obligations properly chargeable to that account. 31 U.S.C. §1553(a); DOD FMR, vol. 3, ch. 10, para. 100201A.
- B. Contract Changes. A contract change is one that requires the contractor to perform additional work. Identity of the appropriate fund for obligation purposes is dependent on whether the change is "in-scope" or "out-of-scope." The contracting officer is primarily responsible for determining whether a change is within the scope of a contract. DOD FMR, vol. 3, ch. 8, para. 080304, Specific Guidelines for Determining Scope of Work Changes.
  - 1. In-scope change. Charge the appropriation initially used to fund the contract.
    - a. Relation-Back Theory. The "relation-back theory" is based upon the rationale "that the Government's obligation under the subsequent price adjustment is to fulfill a bona fide need of the original fiscal year and therefore may be considered as within the obligation which was created by the original contract award." See Environmental Protection Agency - Request for Clarification, B-195732, Sept. 23, 1982, 61 Comp. Gen. 609, 611, 82-2 CPD ¶ 491; See also The Honorable Andy Ireland, House of Representatives, B-245856.7, 71 Comp. Gen. 502 (1992).

- b. Increase of ceiling price under Cost-reimbursement contract. For an increase in ceiling price not required in the original contract (i.e., discretionary increase), obligate funds from fiscal year cited in the original contract if available, then current funds. DFAS-IN 37-1, table 8-7, note 1. See also Proper Fiscal Year Appropriation to Charge for Contract and Contract Increases, B-219829, 65 Comp. Gen. 741 (1986) (finding proper the use of current funds to fund increase to CPFF contract).
  2. Change outside the scope of the contract. Treat as a new obligation and use funds current when the contracting officer approves the change. Environmental Protection Agency-Request for Clarification, B-195732, Sept. 23, 1982, 61 Comp. Gen. 609, 82-2 CPD ¶ 491.
  3. It is not permissible to obligate for potential contract modifications or close-out costs in order to protect those funds for other obligations. Office of the Special Inspector General for Iraq Reconstruction, INTERIM AUDIT REPORT ON IMPROPER OBLIGATIONS USING THE IRAQ RELIEF AND RECONSTRUCTION FUND (IRRF 2), SIGIR-06-037 (22 Sept., 2006).
- C. Limitations on use of Expired or Current Funds to adjust obligations. 31 U.S.C. § 1553(c); DOD FMR, vol. 3, chs. 8 and 10; DFAS-IN 37-1, para. 0815.
  1. Expired Accounts. If a contract change requires the contractor to perform new work (i.e. an in-scope modification that adds tasks or performance objectives), the change is subject to the following provisions:
    - a. Contract change in Excess of \$4 Million. Approval by the Under Secretary of Defense (Comptroller) is required when the amount of an obligation would cause the total amount of charges in any fiscal year for a single program, project, or activity to exceed \$4 million and the account being used to fund the obligations is no longer available for new obligation. DOD FMR, vol. 3, ch. 10, para. 100204.
    - b. Contract change of \$25 Million or More. In addition to the requirements for changes in excess of \$4 Million, The Under Secretary of Defense (Comptroller) must submit a notice of intention to make the obligation, along with the legal basis and policy reasons for obligation, to the Armed Services and Appropriations Committees of the Senate and the House for those changes of \$25 Million or more. DOD FMR, vol. 3, ch. 10, para. 100205.

- (1) After 30 days have elapsed following submission of the notice, the proposed obligation may be recorded unless any congressional committee notifies the USD(C) of its disapproval.
  - (2) DOD components are required to submit to DOD documentation that explains the circumstances, contingencies, or management practices that caused the need for the adjustment, to include letters to the appropriate congressional committees for the signature of the USD(C).
2. Current Funds otherwise chargeable to Cancelled Account. DOD FMR, vol. 3, ch. 10, para. 100201F. When a currently available appropriation is used to pay an obligation, which otherwise would have been properly chargeable both as to purpose and amount to a canceled appropriation, the total of all such payments by that current appropriation may not exceed the lesser of:
  - a. The unexpended balance of the canceled appropriation; or
  - b. The unexpired unobligated balance of the currently available appropriation; or
  - c. One percent of the total original amount appropriated to the current appropriation being charged.
    - (1) For annual accounts, the 1 percent limitation is of the annual appropriation for the applicable account—not total budgetary resources (e.g. reimbursable authority).
    - (2) For multi-year accounts, the 1 percent limitation applies to the total amount of the appropriation.
    - (3) For contract changes, charges made to currently available appropriations will have no impact on the 1 percent limitation rule. The 1 percent amount will not be decreased by the charges made to current appropriations for contract changes.

## VII. RULES OF OBLIGATION FOR TERMINATED CONTRACTS.

### A. Termination for Convenience.

1. When a contract is terminated for the convenience of the government, the contractor is entitled to a settlement that typically includes payment for costs incurred, a reasonable profit (unless the contractor is in a loss status at time of termination), and reasonable costs of settlement of the terminated work. See e.g., FAR 52.249-1, Termination for the Convenience of the Government (Fixed-Price).
2. The contracting officer is responsible for deobligating all funds in excess of the estimated termination settlement costs. FAR 49.101(f); DOD FMR, vol. 3, ch. 8, para. 080512.
3. If a contract is terminated for default or for the convenience of the government pursuant to a court order or determination by a contracting officer that the award was improper due to explicit evidence the award was erroneous and when the determination is documented with appropriate finding of fact or law or by other competent authority (board of contract appeals, Government Accountability Office, or contracting officer) that the contract award was improper, the appropriation originally cited may be used in a subsequent fiscal year to fund a replacement contract if the following criteria are met:
  - a. the original contract is made in good faith;
  - b. the agency has a continuing bona fide need for the goods or services involved;
  - c. the replacement contract is of the same size and scope as the original contract; and
  - d. the replacement contract is executed without undue delay after the original contract is terminated for convenience. See Navy, Replacement Contract, B-238548, Feb. 5, 1991, 70 Comp. Gen. 230, 91-1 CPD ¶ 117 (holding that funds are available after contracting officer's determination that original award was improper); DFAS-IN 37-1, para. 080606. If a reprocurement will result in an obligation that exceeds \$4 million then the action first must be submitted to USD(C) for approval. DOD FMR, vol. 3, ch. 10, para. 100206.

- B. Termination for Default. After a contract is terminated for default, the government may still have a bona fide need for the supply or service. In such a case, the originally obligated funds remain available for obligation for a reprocurement contract, notwithstanding the expiration of the normal period of availability, if:
1. The replacement contract is awarded without undue delay after the original contract is terminated for default;
  2. its purpose is to fulfill a bona fide need that has continued from the original contract; and
  3. the replacement contract is awarded on the same basis and is similar substantially in scope and size as the original contract. See Funding of Replacement Contracts, B-198074, July 15, 1981, 60 Comp. Gen. 591, 81-2 CPD ¶ 33; DFAS-IN 37-1, para. 080607.

## **VIII. MISCELLANEOUS RULES OF OBLIGATION.**

- A. Bid Protests or other challenge. 31 U.S.C. § 1558; DFAS-IN 37-1, para. 080608.
1. Funds available at the time of protest or other action filed in connection with a solicitation for, proposed award of, or award of such contract, remain available for obligation for 100 days after the date on which the final ruling is made on the protest or other action. A protest or other action consists of a protest filed with the Government Accountability Office, or an action commenced under administrative procedures or for a judicial remedy if:
    - a. The action involves a challenge to—
      - (1) a solicitation for a contract;
      - (2) a proposed award for a contract;
      - (3) an award of a contract; or
      - (4) the eligibility of an offeror or potential offeror for a contract or of the contractor awarded the contract; and

- b. Commencement of the action delays or prevents an executive agency from making an award of a contract or proceeding with a procurement. 31 U.S.C. § 1558.
  - 2. A ruling is considered final on the date on which the time allowed for filing an appeal or request for reconsideration has expired, or the date on which a decision is rendered on such an appeal or request, whichever is later. 31 U.S.C. § 1558.
    - a. A request for reconsideration of a GAO protest must be made within ten days after the basis for reconsideration is known or should have been known, whichever is earlier. 4 C.F.R. § 21.14(b).
    - b. The appeal of a protest decision of a district court or the Court of Federal Claims must be filed with the Court of Appeals for the Federal Circuit within 60 days after the judgment or order appealed from is entered. Fed. R. App. P. 4(a)(1)(B); DFAS-IN Reg. 37-1 para. 080606.
- B. Ratification of Unauthorized Commitments. Charge against the funds that would have been charged had the obligation been valid from its inception. FAR 1.602-3; DFAS-IN 37-1, tbl. 8-6, para. 12; Fish & Wildlife Serv.-Fiscal Year Chargeable on Ratification of Contract, B-208730, Jan. 6, 1983, 83-1 CPD ¶ 75 (ratification relates back to the time of the initial agreement, which is when the services were needed and the work was performed).
- C. Liquidated Damages. Recover the amount of liquidated damages deducted and withheld from the contractor. If the contractor objects to the assessment of liquidated damages, treat the amount as a contingent liability. Reestablish an obligation only when a formal contractor claim is “approved,” i.e., sustained by government admission or by a judgment. DFAS-IN 37-1, tbl. 8-7.

#### D. Litigation.

1. General. As a general rule, the amount of liability expected to result from pending litigation shall be recorded as an obligation in cases where the government definitely is liable for the payment of money from available appropriations, and the pending litigation is for determining the amount of the government's liability. In other cases, an obligation shall not be recorded until the litigation has been concluded or the government's liability finally is determined. DOD FMR, vol. 3, ch. 8, para. 081203.
2. Settlement of a claim. Obligate funds using the same obligation rules that would be used for normal contracts. DOD FMR, vol. 3, ch. 8, para. 080304E; DFAS-IN 37-1, tbl. 8-6, para. 14.
3. Judgments or monetary awards. Initially, the government may pay judgments from a permanent appropriation called the Permanent Judgment Appropriation (Judgment Fund). 31 U.S.C. § 1304. The Contract Disputes Act (CDA) requires agencies to reimburse the Judgment Fund for CDA judgments. 41 U.S.C. § 612(c). Agencies make reimbursements from funds available for obligation when the judgment is entered. Expired funds that were current at the time of the judgment may also be used. If more than one appropriation is involved in the monetary judgment, then the reimbursement is prorated against those appropriations. Any proration between or among appropriations must be based on the nature of the claim and the basis of that monetary judgment in the particular case. DOD FMR, vol. 3, ch. 8, para. 080304F1; DFAS-IN 37-1, tbl. 8-6, para. 15; Bureau of Land Mgt. - Reimbursement of CDA Payments, B-211229, 63 Comp. Gen. 308 (1984).
4. Attorney fees and other expenses. These costs are not payable by the Judgment Fund. Record obligations against current funds at the time the awards are made by the deciding official or by the court. DFAS-IN 37-1, tbl. 8-6.

## IX. CONCLUSION

- A. Commitment accounting allows the government to ensure sufficient funds exist to fund all pending obligations should they all be executed simultaneously. Commitments must be recorded in various amounts for different types of contracts, generally tracking with the amount of liability (or a reasonable estimate of future liability) the government will incur at the time of obligation.

- B. Obligations are accounting transactions based on actual legal liabilities such as contract award, acceptance of orders placed (if that order constitutes acceptance of a contractor's offer to sell), and other transactions. Obligations carry legal liabilities and may lead to Antideficiency Act violations unless they are correctable. Agencies must obligate various amounts based on the known or estimated amount of financial liability the government has in a given contract action.
- C. Most funds are only available for obligation for a certain period of time, after which they expire. Expired funds may be used in some circumstances to adjust old obligations, but are subject to some approval requirements if the adjustment is based on requiring the contractor to perform more work and the amount exceeds \$4 million.
- D. Expired appropriations may remain available for obligation based on the termination of a contract under some conditions.

**APPENDIX A**  
**31 U.S.C. 1501 (2012)**

**§ 1501. Documentary evidence requirement for Government obligations**

(a) An amount shall be recorded as an obligation of the United States Government only when supported by documentary evidence of—

(1) a binding agreement between an agency and another person (including an agency) that is—

(A) in writing, in a way and form, and for a purpose authorized by law; and

(B) executed before the end of the period of availability for obligation of the appropriation or fund used for specific goods to be delivered, real property to be bought or leased, or work or service to be provided;

(2) a loan agreement showing the amount and terms of repayment;

(3) an order required by law to be placed with an agency;

(4) an order issued under a law authorizing purchases without advertising—

(A) when necessary because of a public emergency;

(B) for perishable subsistence supplies; or

(C) within specific monetary limits;

(5) a grant or subsidy payable—

(A) from appropriations made for payment of, or contributions to, amounts required to be paid in specific amounts fixed by law or under formulas prescribed by law;

(B) under an agreement authorized by law; or

(C) under plans approved consistent with and authorized by law;

(6) a liability that may result from pending litigation;

(7) employment or services of persons or expenses of travel under law;

(8) services provided by public utilities; or

(9) other legal liability of the Government against an available appropriation or fund.

(b) A statement of obligations provided to Congress or a committee of Congress by an agency shall include only those amounts that are obligations consistent with subsection (a) of this section.

**APPENDIX B**  
**OBLIGATIONS AND COMMITMENTS – COMPARISON CHART**

Commitment / Certification	Obligation
Internal to Agency	Promise to External Agency
Subjective: Conservative Estimate	Objective: Amount Promised
Conservative Estimate of Contingent Liability	No Obligation while Liability Contingent
Certify Before Award	Occurs upon Award; Record After Obligation
Specific Act of Certifying Officer	Occurs when Promise is Made

# **APPENDIX C** **PURCHASE REQUEST AND COMMITMENT (PR&C)**

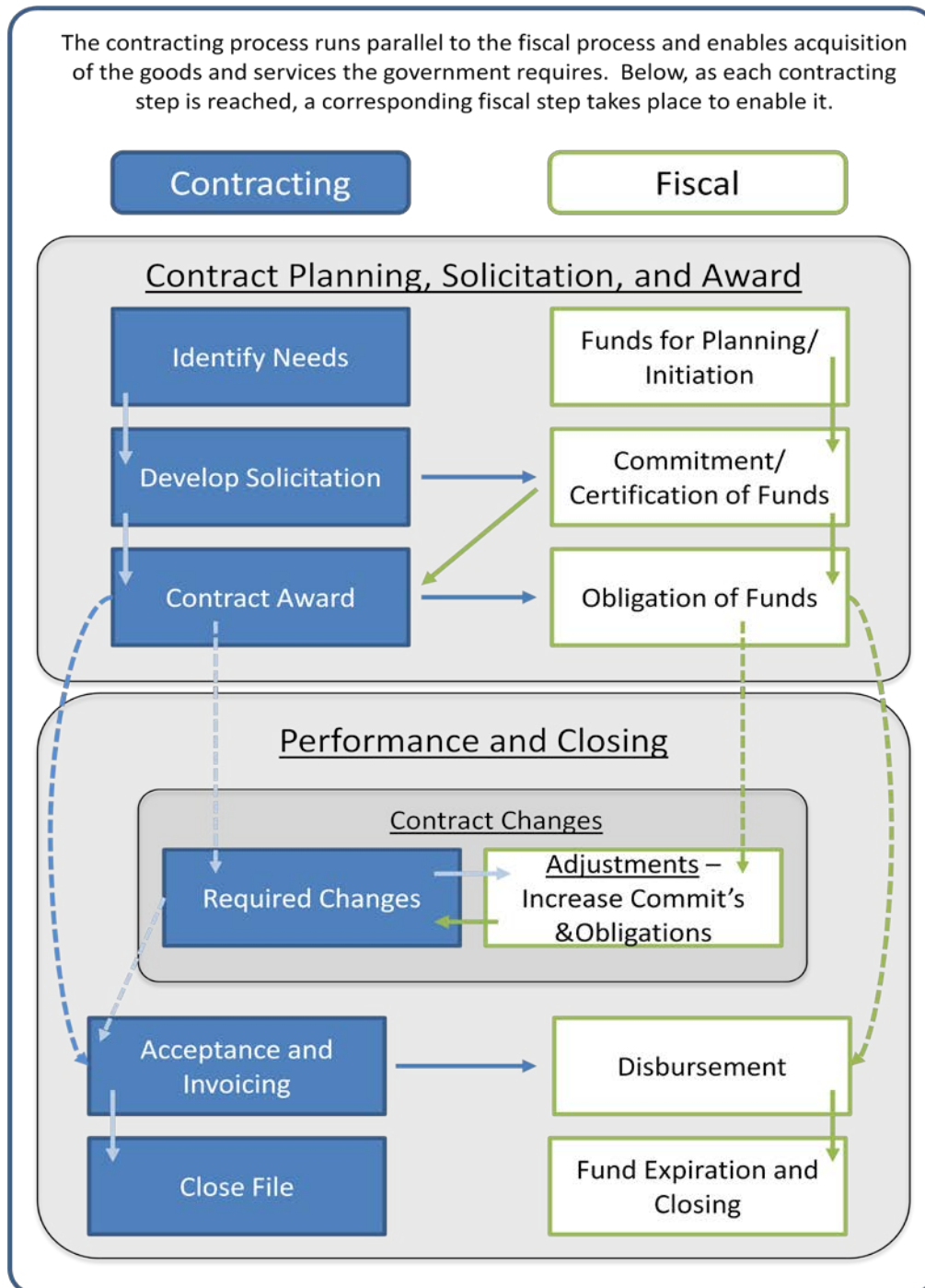
<b>PURCHASE REQUEST AND COMMITMENT</b> <small>For use of this form, see AR 37-1; the proponent agency is OAC/NPAH.</small>		<b>1. PURCHASE INSTRUMENT NO.</b>		<b>2. REQUISITION NO.</b>	<b>3. DATE</b>	<b>PAGE OF PAGES</b>
<b>4. TO:</b>		<b>5. THRU:</b>		<b>6. FROM:</b>		
It is requested that the supplies and services enumerated below or on attached list be						
<b>7. PURCHASED FOR</b>		<b>8. DELIVERED TO</b>		<b>9. NOT LATER THAN (Date)</b>		
The supplies and services listed below cannot be secured through normal supply channels or other Army supply sources in the immediate vicinity, and their procurement will not violate existing regulations pertaining to local purchases for stock, therefore, local procurement is necessary for the following reason: (Check appropriate box and complete item.)						
<input type="checkbox"/>	<b>12. LOCAL PURCHASES AUTHORIZED AS THE NORMAL MEANS OF SUPPLY FOR THE FOREGOING BY</b>	<input type="checkbox"/>	<b>13. REQUISITIONING DISCLOSES NONAVAILABILITY OF ITEMS AND LOCAL PURCHASE IS AUTHORIZED BY</b>	<b>10. NAME OF PERSON TO CALL FOR ADDITIONAL INFORMATION</b>		
<b>11. TELEPHONE NUMBER</b>				<b>FUND CERTIFICATION</b> The supplies and services listed on this request are properly chargeable to the following allotments, the available balances of which are sufficient to cover the cost thereof, and funds have been committed.		
<b>19. ACCOUNTING CLASSIFICATION AND AMOUNT</b>						
<b>14. ITEM DESCRIPTION OF SUPPLY OR SERVICES</b>		<b>15. QUANTITY</b>	<b>16. UNIT</b>	<b>17. ESTIMATED UNIT PRICE <sup>a</sup></b>	<b>18. TOTAL COST <sup>b</sup></b>	<b>20. TYPED NAME AND TITLE OF CERTIFYING OFFICER</b>
						<b>21. SIGNATURE</b>
						<b>22. DATE</b>
<b>23. DISCOUNT TERMS</b>						
<b>24. PURCHASE ORDER NUMBER</b>						
<b>25. THE FOREGOING ITEMS ARE REQUIRED NOT LATER THAN AS INDICATED ABOVE FOR THE FOLLOWING PURPOSE</b>						
<b>26. DELIVERY REQUIREMENTS</b> ARE MORE THAN 7 DAYS REQUIRED TO INSPECT AND ACCEPT THE REQUESTED GOODS OR SERVICES YES <input type="checkbox"/> NO <input type="checkbox"/> IF YES, NUMBER OF DAYS REQUIRED						
<b>27. TYPED NAME AND GRADE OF INITIATING OFFICER</b>	<b>28. SIGNATURE</b>	<b>29. DATE</b>	<b>30. TYPED NAME AND GRADE OF APPROVING OFFICER OR DESIGNEE</b>	<b>31. SIGNATURE</b>	<b>32. DATE</b>	<b>33. DATE</b>
<b>30. TELEPHONE NUMBER</b>						
<b>31. TYPED NAME AND GRADE OF SUPPLY OFFICER</b>	<b>32. SIGNATURE</b>	<b>33. DATE</b>				

DA FORM 3953, MAR 1991 EDITION OF AUG 76 IS OBSOLETE AFM FE 12.03ES

## APPENDIX D

### CONTRACT – FISCAL PARALLEL EVENTS CHART

The contracting process runs parallel to the fiscal process and enables acquisition of the goods and services the government requires. Below, as each contracting step is reached, a corresponding fiscal step takes place to enable it.



## APPENDIX E:

### DPAP MEMO, SUBJECT: PROPER USE OF AWARD FEE CONTRACTS AND AWARD FEE PROVISIONS, DTD 24 APRIL 2007



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

#### OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

APR 24 2007

#### MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS (ATTN: ACQUISITION EXECUTIVES) DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Proper Use of Award Fee Contracts and Award Fee Provisions

Over the past several years there has been an increased use of cost-plus-award-fee contracts and award fee provisions, particularly for development efforts and low rate initial production (LRIP) efforts. The purpose of this memorandum is to state the Department's policy with regard to the proper use of award fee contracts and award fee provisions.

FAR 16.104 requires that we take into account a number of factors when selecting the proper contract type. Among them are: price competition, price analysis, cost analysis, type and complexity of requirement, urgency of requirement, period of performance or length of production run, the Contractor's technical capability and financial responsibility, the adequacy of the contractor's accounting system, concurrent contracts, and the extent and nature of proposed subcontracting and acquisition history.

In particular, with regard to the use of award fee contracts, FAR 16.405-2 (b)(1)(i) states that: "The cost-plus-award-fee contract is suitable for use when - (i) The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance or schedule."

The fact is that most, if not all, of our development and LRIP contracts contain numerous objective criteria. For a variety of reasons, expediency being among the most prevalent, over the past several years we have chosen not to construct contracts that appropriately contain the means to measure objective and subjective criteria.

***It is the policy of the Department that objective criteria will be utilized, whenever possible, to measure contract performance.*** In those instances where objective criteria exist, and the Contracting Officer and Program Manager wish to also evaluate and incentivize subjective elements of performance, the most appropriate contract type would be a multiple incentive type contract containing both incentive and award fee criteria (e.g., cost-plus-incentive/award fee, fixed-price-incentive/award fee) or a fixed price/award fee contract.



If it is determined that objective criteria do not exist and that it is appropriate to use a cost-plus-award fee (CPAF) contract, then the Head of the Contracting Activity (HCA) must sign a determination and finding (D&F) that "the work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance or schedule." The HCA may delegate this approval authority, within the contracting chain, no lower than one level below the HCA.

**The following shall apply to all award fee provisions:**

Award fee may be earned in accordance with the following:

<u>Rating</u>	<u>Award Fee Pool Earned</u>
Unsatisfactory	0%
Satisfactory	No Greater Than 50%
Good	50%-75%
Excellent	75%-90%
Outstanding	90%-100%

**Definitions of Ratings**

Unsatisfactory	Contractor has failed to meet the basic (minimum essential) requirements of the contract.
Satisfactory	Contractor has met the basic (minimum essential) requirements of the contract.
Good	Contractor has met the basic (minimum essential) requirements of the contract, and has met at least 50% of the award fee criteria established in the award fee plan.
Excellent	Contractor has met the basic (minimum essential) requirements of the contract, and has met at least 75% of the award fee criteria established in the award fee plan.

Outstanding

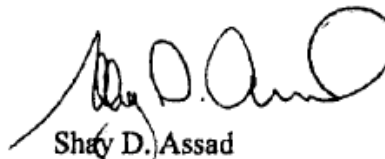
Contractor has met the basic (minimum essential) contract requirements and has met at least 90% of the award fee criteria established in the award fee plan.

Contracting Officers are required, together with the Program Manager, to determine the basic contract requirements that will be specified in the contract. In consultation with the Program Manager and the Fee Determining Official, the Contracting Officer shall derive the award fee criteria to be included in the Award Fee Plan among the trade space of various technical/programmatic, cost and schedule contract objectives.

The policies included in this memo are effective for all solicitations issued commencing on 1 August 2007, and will be incorporated into the DFARS or DFARS Procedures, Guidance and Information, as appropriate.

For ACAT I programs, copies of all D&Fs shall be provided to the Director, Defense Procurement and Acquisition Policy, within 30 days of the end of the quarter, beginning with the quarter ending September 30, 2007. Senior Procurement Executives of the Military Departments and Other Defense Agencies shall be responsible for establishing the level of reporting for non-ACAT I contracts within their organizations.

Please direct any questions regarding this memorandum to Mr. Bill Sain, Senior Procurement Analyst, Defense Procurement and Acquisition Policy (Office of Cost, Pricing, and Finance) at 703-602-0293 or [bill.sain@osd.mil](mailto:bill.sain@osd.mil).



Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy